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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/629,322
Filing Date: July 28, 2003
Appellant(s): MURRER, ALBERT ANDREW

MAILED

MAR 29 2007

Group

MAILED

MAR 29 2007

Group 3700

Barry S. Wilson
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed January 4, 2007 appealing from the Office
action mailed May 5, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows: in item 1, the rejection is on claims 6 and 12-15, not 12-16 as shown in appellant's brief. The remainder of appellant's statement of the grounds of rejection is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,336,342	ZEDDES	1-2002
6,609,628	TATTAM	8-2003

6,631,801	BOYD-MOSS et al	10-2003
4,865,899	REICHERT	9-1989
4,585,159	TRAVIS	4-1986
2003/0106895 A1	KALAL	6-2003
2003/0136702 A1	REDZISZ et al	7-2003
WO 02/18210 A1	MCHUTCHISON	3-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 6, and 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Redzisz et al (2003/0136702, July 24, 2003) (Redzisz) in view of Zeddies, of record.
2. Regarding claim 6, Redzisz discloses a container (Figures 1-6, paragraph 0030) with a collapsible soft sided outer shell, a plurality of vertical walls and a bottom integrally formed, an inner layer of watertight material (60, Figures 10 and 11, paragraph 0033, claim 14), a lid secured to the sidewalls. Redzisz does not teach the use of a rigid inner frame. Zeddies discloses a collapsible rigid inner frame used with a collapsible outer shell to provide support to the outer shell. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a collapsible rigid inner frame as disclosed by Zeddies in the container disclosed by Redzisz to provide support for the soft sided collapsible outer shell.

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3. Regarding claims 12 and 13, Redzisz discloses an open top with a lid selectively secured to the vertical walls with a zipper (Figures 2 and 3).
4. Regarding claim 14, Redzisz discloses the bottom is structurally reinforced (76, 78, Figure 11, paragraph 0034).
5. Regarding claim 15, Redzisz discloses an outer fabric layer and a foam insulation layer (paragraph 0030).
6. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Redzisz and Zeddies in view of Tattam, of record. Redzisz and Zeddies disclose the invention except for the use of the container to transport hazardous materials such as human organs. Tattam discloses a collapsible insulated container that may be used for transportation of organs (column 1, lines 9-32). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of the container of Redzisz and Zeddies for the transport hazardous materials such as human organs since human organs require transportation in a temperature controlled container and it is known to use collapsible insulated containers for such a purpose.
7. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Redzisz and Zeddies as applied to claim 6 in view of Boyd-Moss et al, of record. Redzisz and Zeddies disclose the container of claim 6 but do not teach that the outer shell satisfies IATA 602 requirements. Boyd-Moss et al discloses that it is known to construct a transport package that meets IATA 602 requirements to allow the package to be used for transport of hazardous goods (column 1, lines 9-15 and column 8, lines 1-7). It would have been obvious to one of ordinary skill in the art at the time the invention was made

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to have incorporated the use materials and construction to meet IATA 602 as disclosed by Boyd—Moss et al in the container disclosed in claim 6 to allow the container to be used for transport of hazardous materials.

8. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Redzisz and Zeddies as applied to claim 6 in view of Kalal, of record. Redzisz and Zeddies disclose the container of claim 6 except for the vent holes. Kalal discloses a collapsible soft sided container with a liner having vent holes in the outer shell to allow venting of air when the container is collapsed (42, Figure 2, paragraph 0022). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of vent holes in the outer shell as disclosed by Kalal in the container disclosed in claim 6 to allow venting of air when the container is collapsed.

9. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Redzisz and Zeddies as applied to claim 15 in view of Reichert (4,865,899). Redzisz and Zeddies disclose the container of claim 15 but do not teach the outer fabric includes polyester. Reichert discloses a container for the transport of hazardous materials constructed from fabric comprising polyester that is selected for a high degree of imperviousness to hazardous materials. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of polyester in the fabric of the container as disclosed by Reichert in the container disclosed in claim 15 to provide a high degree of imperviousness to hazardous materials.

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10. Claims 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Redzisz and Zeddies as applied to claim 6 in view of Travis, of record.

11. Regarding claim 17, Redzisz and Zeddies disclose the container of claim 6 with an inner frame having opposing rigid longitudinal walls and opposing collapsible side walls but do not teach that the side walls link the ends of the longitudinal walls and allow a reduction in a distance between the longitudinal walls when collapsed. Travis discloses a frame structure capable being used as the inner frame of the invention made of rigid material (Figures 1 and 2, column 2, lines 21-23) with the sidewalls linking the ends of the longitudinal walls and the walls being collapsible allowing a reduction in a distance between the longitudinal walls (column 2, lines 14 to 25). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of the frame structure as disclosed by Travis in the container disclosed by claim 6 to provide an inner frame that would be less bulky and fold flat with a thinner profile for handling and storage.

12. Regarding claim 18, Travis further discloses the bottom is pivotably engaged to the opposing rigid walls and pivots between open and collapsed positions (column 2, lines 29-30). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of the bottom panel pivotably attached to the rigid wall as disclosed by Travis to provide for the movement of the rigid bottom from an open position to the collapsed position to allow collapse of the frame.

13. Regarding claim 19, Redzisz discloses a fastener that secures the outer shell in the collapsed position (Figures 6-8 and 13-15). It would have been obvious to one of

ordinary skill in the art at the time the invention was made to have incorporated the use of a fastener as disclosed by Redzisz on the collapsed inner frame as well, to keep the frame secured in the collapsed position for ease of handling.

14. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Redzisz and Zeddies in view of McHutchison (WO 02/18210 A1, March 7, 2002). Redzisz and Zeddies disclose the invention except for the outer shell capable of withstanding an internal pressure, which produces a pressure differential of not less than 95 kPa in the range of -40 degrees C to +55 degrees. McHutchison discloses an insulated container that it is able to transport human organs at pressures other than atmospheric pressure because this allows organs to be conserved for a longer period of time. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the ability to transport human organs at pressures other than atmospheric pressure in the container of claim 6. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the capability of withstanding an internal pressure which produces a pressure differential of not less than 95 kPa in the range of -40 degrees C to +55 degrees, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA).

(10) Response to Argument

I. Rejection of claim 6 and 12-15 under 35 U.S.C. 103(a)

Appellant argues that the examiner has failed to establish a prima facie case of obviousness because there is no motivation to combine the Redzisz et al (Redzisz) and

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Zeddies references. Appellant maintains there is no motivation to combine the references because there is no need for an additional inner frame as taught by Zeddies in the Redzisz container. Appellant argues that since the Redzisz container is a rectangular parallelepiped that is foldable yet maintains its structural integrity and shape when fully open there is no need for an additional frame. Appellant argues that the Redzisz container has an internal frame and cites plates 76 and 78 as seen in Figure 11 of Redzisz as frame components that provide sufficient structural rigidity to preclude the need for an additional frame.

In response, the Redzisz container is a collapsible container as can be seen in Figures 4-6. The plates 76 and 78 consist of two separate plate elements in the bottom panel of the container and are placed such that the bottom panel can fold down the middle when the case is collapsed. The end panels (panels 26 and 28) of the container fold in an accordion like fashion when the container is collapsed and are not shown to have any plates or other frame members. There is no inner frame structure in Redzisz to prevent the container from being moved from the open configuration toward the collapsed configuration, either on purpose or by accident, whether the case is empty or has some contents, if collapsing forces are applied to the end panels or the bottom panel.

Zeddies identifies a removable inner frame for use in a collapsible container (See 40, Figures 6 and 7 of Zeddies) that is a supportive structure for the walls of the container, the frame adapted to fit in the container in the uncollapsed configuration. See

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column 5, lines 13-24 of Zeddies. Zeddies clearly teaches the use of a supportive structure in a collapsible container.

It would have be obvious to one of ordinary skill in the art that a removable inner frame could be used as a support structure, as taught by Zeddies, in the Redzisz container to prevent partial of complete collapsing of the container when such an occurrence would be undesirable. There is nothing is Redzisz alone that provides this function.

Appellant argues that incorporation of the removable inner frame of Zeddies in the Redzisz container runs counter to the purpose of the Redzisz design. In response, since the inner frame of Zeddies is removable it will not interfere with the purpose of the Redzisz design nay more than it interferes with the purpose of Zeddies, which is to provide a collapsible container. The Redzisz container is collapsible as designed, just as the Zeddies container is collapsible as designed, with the removal of the frame.

Appellant argues that the examiner is incorrect in characterizing the Redzisz container as having a soft sided outer shell because Redzisz does not define his container as having a soft sided outer shell.

In response, Redzisz describes his container as comprised of first and second flexible fabric sections made from a flexible sheet material with an open cell foam layer adjacent the outside layer of the panels. See paragraph 0030 of Redzisz. The examiner maintains the resulting panel would be soft sided as opposed to a panel made of a rigid nonflexible material. Additionally, the bottom panels fold down the middle of the panel and the end panels fold in an accordion fashion when the container is collapsed as seen

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in Figures 4-6. This requires folding of the panel components as seen in Figures 10 and 11 of Redzisz. The container panels, thus, must be soft sided to some degree to allow such folding without destruction of the panel components.

II. Rejection of claim 7 and 8 under 35 U.S.C. 103(a)

Appellant does not argue the teachings of the Tattam reference but argues that Tattam does not cure the alleged defect of Redzisz as modified by Zeddies. The alleged defect of Redzisz as modified by Zeddies has been addressed in the response provided in Section I above.

III. Rejection of claim 9 under 35 U.S.C. 103(a)

Appellant does not argue the teachings of the Boyd-Moss et al reference but argues that Boyd-Moss does not cure the alleged defect of Redzisz as modified by Zeddies. The alleged defect of Redzisz as modified by Zeddies has been addressed in the response provided in Section I above.

Rejection of claim 10 under 35 U.S.C. 103(a)

Appellant does not argue the teachings of the Kalal reference but argues that Kalal does not cure the alleged defect of Redzisz as modified by Zeddies. The alleged defect of Redzisz as modified by Zeddies has been addressed in the response provided in Section I above.

IV. Rejection of claim 10 under 35 U.S.C. 103(a)

Appellant argues that the Reichert reference does not cure the alleged defect of Redzisz as modified by Zeddies. The alleged defect of Redzisz as modified by Zeddies has been addressed in the response provided in Section I above.

Appellant argues that Reichert is non-analogous art. Appellant cites that Reichert discloses a container for the transport and storage of hazardous materials such as diesel fuel, gasoline chemical solvents and other volatile and or corrosive materials. The instant invention is a container for small-scale transportation and storage of biohazard material. Appellant maintains that Reichert is non-analogous art because the container of Reichert has a scale of capacity different from the instant invention and is intended for use with differing materials and there is no proper motivation to combine the Reichert reference with Redzisz as modified by Zeddies.

In response, the Reichert container is for the transport and storage of hazardous materials See Figures 8-10 and column 6, lines 13-27 in particular. The container of the instant invention is for the transport and storage of hazardous materials as defined by the appellant. Reichert is analogous art. Reichert is used to teach the use of polyester in the outer fabric layer of a container used for the transport of hazardous materials. See column 4, lines 24-30 where the container wall 12 is identified as comprising a thermoplastic polyester elastomeric liner 14 selected for a high degree of imperviousness to hazardous material. This would be knowledge generally available to one of ordinary skill in the art and the combination of Reichert with Redzisz as modified by Zeddies is proper.

V. Rejection of claim 17-19 under 35 U.S.C. 103(a)

Appellant argues that the Travis reference does not cure the alleged defect of Redzisz as modified by Zeddies. The alleged defect of Redzisz as modified by Zeddies has been addressed in the response provided in Section I above.

Appellant argues that Travis contemplates his structure as a container itself and uses an entirely different design for its removable inner frame. As such, there is no motivation from the art to use the collapsible feature of the container of Travis as a removable collapsible inner frame other than hindsight.

In response to appellant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the appellant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

The use of the container disclosed by Travis in Figures 1-11 as a removable inner frame would provide a collapsible frame structure that would be less bulky and fold flat with a thinner profile for handling and storage than the frame of Zeddies. At the same time it would provide wall support on all of the wall surfaces supported by Zeddies, the bottom, longitudinal side and end panels. Travis is analogous art as a collapsible container and it would be obvious to one of ordinary skill in the art that the Travis container would be capable of functioning as a collapsible removable inner frame as an alternative to the Zeddies frame.

VI. Rejection of claim 25 under 35 U.S.C. 103(a)

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Appellant does not argue the teachings of the McHutchison reference but argues that McHutchison does not cure the alleged defect of Redzisz as modified by Zeddies. The alleged defect of Redzisz as modified by Zeddies has been addressed in the response provided in Section I above.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.


Respectfully submitted,

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Art Unit 3781




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